



S/N 10/848,829

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	NYLAND	Examiner:	K. ROWAN
Serial No.:	10/848,829	Group Art Unit:	3643
Filed:	MAY 19, 2004	Docket No.:	14684.1US01
Title:	ARM SUPPORT FOR USE WITH A FISHING ROD		

CERTIFICATE UNDER 37 CFR 1.8:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on November 2, 2006.

By:

Name: Kristine A. Wacek

APPELLANT'S BRIEF ON APPEAL

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

23552

PATENT TRADEMARK OFFICE

Sir:

This Brief is presented in support of the Notice of Appeal filed August 4, 2006, concerning the final rejection of claims 10, 11, 13, 23-26, and 35 of the above-identified application, as set forth in the Office Action mailed April 4, 2006 and the Advisory Action mailed June 14, 2006.

A check for \$250.00 to cover the required fee for filing this Brief is enclosed. Please charge any additional fees or credit overpayment to Merchant & Gould Deposit Account No. 13-2725.

An oral hearing is requested. A separate request for oral hearing with the appropriate fee will be filed within two months of the Examiner's Answer.

11/08/2006 DEMMANU1 00000006 10848829

01 FC:2402

250.00 OP

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
I	Real Party of Interest	3
II	Related Appeals and Interferences	4
III	Status of Claims	5
IV	Status of Amendments	6
V	Summary of the Claimed Subject Matter	7
VI	Grounds of Rejection to be Reviewed on Appeal	8
VII	Argument	9
VIII	Claims Appendix	15
IX	Evidence Appendix	17
X	Related Proceedings Appendix	18

I. REAL PARTY OF INTEREST

The real party in interest is Thomas John Nyland, an individual.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 10, 11, 13, 23-26, and 35 are currently pending, and currently rejected.

Claims 1-9, 12, 14-22, 27-34 have been cancelled.

The rejection of each of pending claims 10, 11, 13, 23-26, and 35 is being appealed.

IV. STATUS OF AMENDMENTS

Amendments filed subsequent to the Final Office Action of April 4, 2006 have been entered by the Examiner for purposes of appeal, as indicated in the Advisory Action mailed June 14, 2006.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claim 10 concerns an arm support device (20, FIG. 1) for use with an elongated item having a handle. The device (20) includes a coupler (32) that couples to the handle of the elongated item, a forearm receiving member (28) positioned above the coupler (32), and a pivot member (34) that connects the forearm receiving member (28) to the coupler (32). (Specification page 2, lines 20-24; and FIG. 1.) The forearm receiving member (28) defines a channel (50) elongated along a length (L, FIG. 2) that extends between open front and rear ends (54, 56) of the member. (Specification page 3, lines 18-23; and FIGS. 1 and 2.) The pivot member (34) defines a pivot axis (72, FIG. 2) that extends generally in an upward/downward direction and is located adjacent the front end (54) of the forearm receiving member (28). The forearm receiving member (28) is pivotally moveable about the pivot axis (72). (Specification page 4, lines 9-20.) The length (L, FIG. 2) of the forearm receiving member (28) extends generally radially outwardly from the pivot axis (72). (FIGS. 1-3.)

Independent claim 23 concerns an arm support device (20, FIG. 1) for use with an elongated item having a handle. The device includes a handle coupler (32) defining a pivot shaft opening (150, FIG. 4), an arm cradle (28, FIG. 1) having a base portion (50), and a pivot pin (34) positioned at the front end (54, FIG. 2) of the base portion (50) of the arm cradle (28). (Specification page 2, lines 20-24, page 5 lines 12-17, and FIGS. 1-4.) The arm cradle (28) includes opposing left and right side walls (58, 60, FIG. 2) that define an upwardly facing channel having a width (W) and a length (L). The width (W) of the channel is shorter than the length (L) of the channel. (Specification page 3, lines 20-21 and 26-27, and FIG. 2.) The pivot pin (34) includes a pivot shaft portion (70) defining a pivot axis (72) about which the arm cradle (28) pivots. The pivot shaft portion (70) is pivotally received within the pivot shaft opening (150) of the coupler (32). The pivot shaft portion (70) extends downwardly relative to the arm cradle (28) such that the pivot axis (72) extends generally in an upward/downward direction. (Specification page 4, lines 9-14, and FIG. 3.) The length (L, FIG. 2) of the channel of the arm cradle (28) extends generally radially outwardly from the pivot axis (72). (FIGS. 1-3.)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 10, 11, and 13 are anticipated under 35 U.S.C.102(b) by Roberts (U.S. Patent 2,146,350).
2. Whether claims 23-26 and 35 are unpatentable under 35 U.S.C.103(a) over Perry (U.S. Patent 5,212,900) in view of Roberts (U.S. Patent 2,146,350).

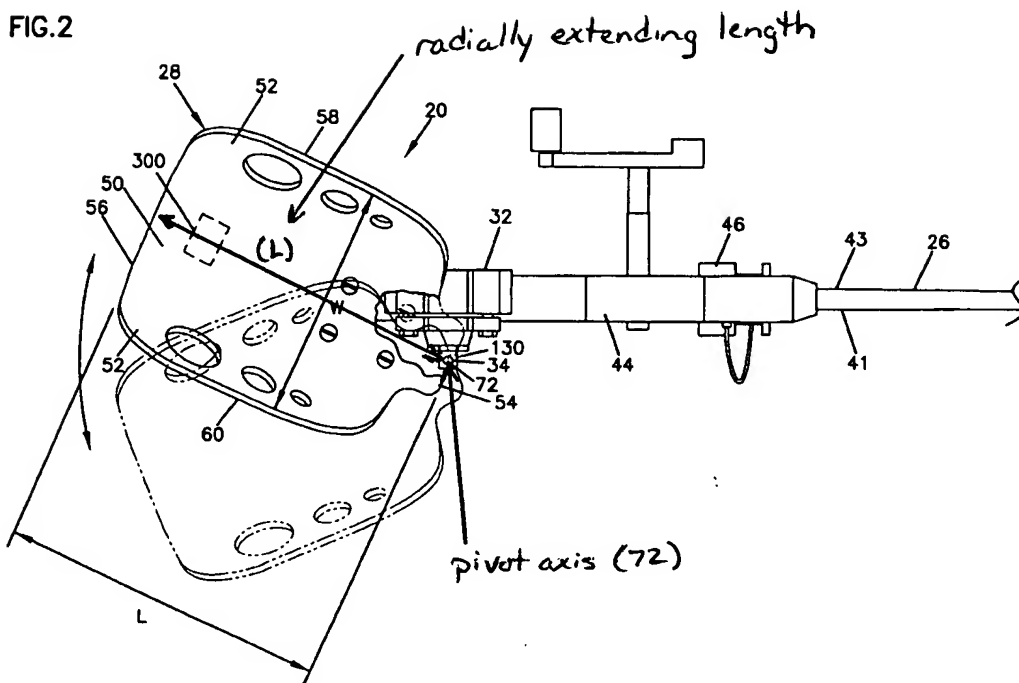
VII. ARGUMENT

Overview:

The present invention relates generally to a device that can be mounted on a handle such as a fishing rod handle to provide support to a user's forearm. This support has a pivotal arrangement that allows the support to pivot left and right to accommodate movement at the user's wrist. It is submitted that none of the cited art is capable of providing this type of functionality. In particular, U.S. Patent No. 5,212,900 to Perry discloses a device having horizontal pivot axes that accommodates up and down pivoting movement. U.S. Patent No. 2,146,350 to Roberts discloses a substantially different device having a channel that faces downwardly and inwardly toward the fishing rod when used by an angler; the device is adapted for supporting a fisherman's arm adjacent the elbow at a location forward of the reel. None of the cited art teaches or suggests the type of pivoting movement disclosed and claimed in the present patent application.

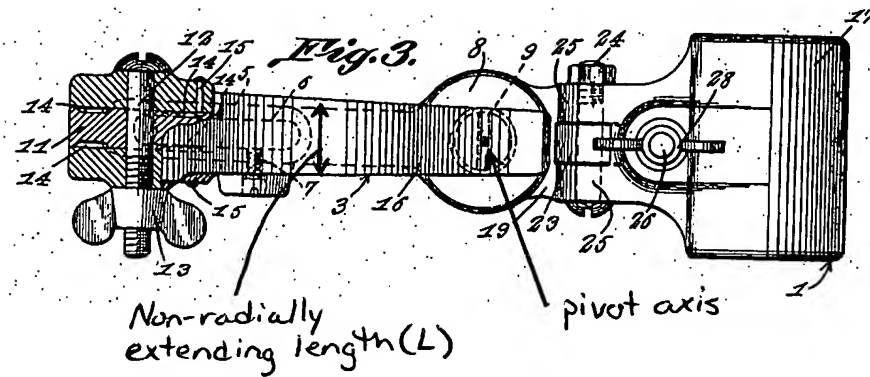
1. Concerning whether claims 10, 11, and 13 are anticipated under 35 U.S.C.102(b) by Roberts (U.S. Patent 2,146,350).

Claim 10 requires the length of the forearm receiving member to extend radially outward from the pivot axis and also specifies that the length of the channel extends between open front and rear ends of the forearm receiving member. Annotated Figure 2 of the present application (shown below) illustrates this feature where the length (L) of the member 28 extends generally radially outward from the pivot axis (72).



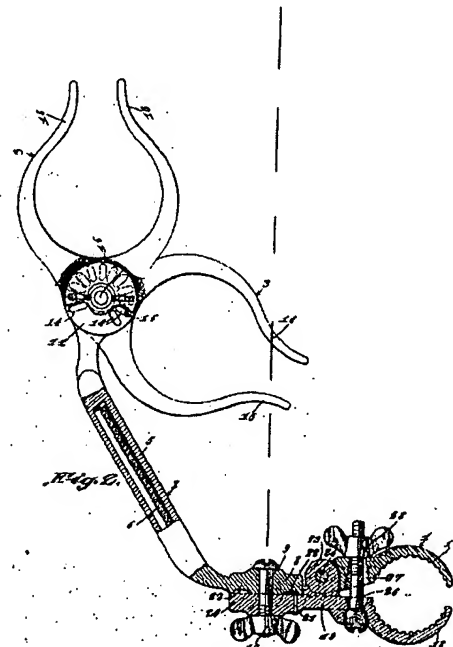
The Examiner has characterized an arm clamp 3 of Roberts as a member defining a channel that extends between open front and rear ends. A bolt 9 of Roberts is characterized as a pivot member. In rejecting claim 10, the Examiner interpreted the length of the "channel" of Roberts as the "distance along the curve of the arm in the plane of the paper." This is not the same length specified in claim 10 because it does not extend between the open front and back ends of the arm clamp 3.

Referring to annotated Figure 3 of Roberts (below), the device is shown with the pivot axis (i.e., the bolt 9 axis) coming out of the page. Applicant's annotated Figure 2 (above) also shows the pivot axis (72) coming out of the page. Applicant's annotated Figure 2 also shows the length L extending between the open ends of the device relative to the pivot axis (72), i.e., the length L extends generally radially outward from the pivot axis (72). Referring to annotated Figure 3 of Roberts (below), the length (L) of the clamp 3, which extends between open front and back ends, does not extend generally radially outwardly from the pivot axis, as required by claim 10.



For at least the above reasons, it is submitted that claim 10, as well as claims 11 and 13 that depend from claim 10, are not anticipated by Roberts.

Additionally, claim 13 further provides that the "forearm receiving member inclines relative to the coupler as the arm cradle extends from the front end to the back end." This clearly is not present in the device of Roberts. For example, as shown below in Figure 2 of Roberts, it can be seen that the clamp 3 of Roberts in no way inclines relative to the coupler as it extends from the open front to the open back of the clamp. Rather, the inclination of the clamp 3 extending from the open front to the open back remains unchanged as the clamp 3 pivots. This provides another reason why claim 13 is not anticipated by Roberts.



2. Concerning whether claims 23-26 and 35 are unpatentable under 35 U.S.C.103(a) over Perry (U.S. Patent 5,212,900) in view of Roberts (U.S. Patent 2,146,350).

Claim 23 relates to an arm support device for use with an elongated item having a handle. The arm support device includes an arm cradle that defines an upwardly facing channel, and a pivot pin positioned at the front end of the arm cradle. The pivot pin includes a pivot shaft portion defining a pivot axis about which the arm cradle pivots. The pivot shaft portion extends downwardly relative to the arm cradle such that the pivot axis extends generally in an upward/downward direction.

The combination of features recited by claim 23 results in an arm support device that supports a person's forearm and also allows the person to laterally change the angle of their forearm relative to the elongated item by bending their wrist. This type of pivotal movement is shown at Figure 2 of the present application.

U.S. Patent No. 5,212,900 to Perry discloses a substantially different type of support device. The device of Perry is specifically designed to stabilize a person's forearm relative to a fishing pole 42 so that the forearm is held in a parallel relation relative to the pole 42. For example, as shown at Figure 1 of Perry, when the stabilizing device of Perry is used, the person's hand 46 and a fixture 100 positioned at the back end of the brace 52 cooperate to prevent the person's forearm from angling laterally away from the rod 42. The intent is for the rod 42 to be supported and braced as if it were an extension of the person's forearm by keeping the forearm and the pole 42 parallel to one another. The only pivotal movement provided in the device of Perry is about a horizontal pivot axis defined by hinge 90. This pivotal action allows the upper brace 54 to pivot about the horizontal axis relative to the lower brace 52. This allows the user's arm to bend at the elbow to allow the forearm 24 to be moved toward and away from the upper arm 26.

In the Office Action of April 4, 2006, the Examiner acknowledged that Perry failed to disclose a pivot pin 96 that extended in an upward/downward direction. However, the Examiner

asserted that it would have been obvious to change the orientation of the pivot pin 96 to the vertical orientation as shown by Roberts “so that the upper portion would be connected to the arm cradle and the lower portion received within the pivot pin opening of the handle coupler 100 noting that merely arranging the location of the parts is contemplated.” There is absolutely no suggestion or motivation for this modification.

In Perry, the side walls of the lower brace 52 overlap the sidewalls of the upper brace 54. The pins 96 are horizontally aligned so that the pins 96 extend through the side walls of the lower and upper braces 52, 54 to provide a pivotal connection between the cradles. The pivotal connection is specifically designed to allow the user's forearm 24 to flex toward and away from the upper arm 26 when the support device is in use. If the orientation of the pins 96 were to be modified to a vertical position as suggested by the Examiner, the pins 96 could not be used to extend through the overlapping side walls of the braces 52, 54 to interconnect the braces 52, 54. Additionally, if the pins 96 were to be positioned vertically, they would no longer allow the user's forearm 24 to flex toward and away from the upper arm 26 when the support device is in use.

Moreover, and in regards to the Examiner's proposed combination, the device disclosed in Roberts is adapted to support an angler's forearm at an angle relative to the fishing pole (see Fig. 1 of Roberts). The bolt 9 allows the arm 2 to be adjusted so that the clamp 3 engages the angler immediately below the elbow to support the angler's forearm at an angled position relative to the pole. As described above, the focus of Perry is to provide a support that holds a person's forearm generally parallel to the fishing pole. Thus, Perry teaches away from supporting a forearm at an angled position relative to the pole. This being the case, one of skill in the art would not be motivated to modify the device of Perry to include the bolt 9 of Roberts.

In view of the above, the modifications suggested by the Examiner are significantly more than a mere “rearranging of the location of the parts.” Instead, the changes would completely alter the intended operation of the device and would be contrary to a clear teaching of the Perry reference regarding the desirability of maintaining parallelism between the brace 52 and the pole

40. In view of the above, it is submitted that one of skill in the art would not be motivated to modify Perry, as suggested by the Examiner; accordingly, independent claim 23 and dependent claims 24-26 and 35 are patentable.

Claim 35 depends from claim 23 and further provides that the pivot pin includes "an upper end portion positioned at the bottom base portion of the arm cradle and a lower end portion defining the pivot shaft portion of the pivot pin." Claim 35 also provides that the upper end portion of the pivot pin "is aligned at an obtuse angle relative to the lower end portion of the pivot pin." In contrast, the pins 96 of Perry appear to have no bend whatsoever. Therefore, even if they were changed in orientation as suggested by the Examiner, they still would not define an obtuse angle as claimed. Furthermore, regardless of their orientation, the pins 96 do not have upper portions positioned at a bottom base portion of a cradle or lower portions defining pivot portions that are pivotally received in a pivot shaft opening of the coupler. The above reasons further support Applicant's position that claim 35 is patentable.

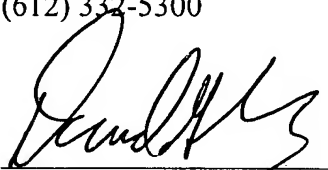
Summary:

It is earnestly requested that the Examiner's rejection be reversed, and that all of the pending claims be allowed.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: 11/2/06



David G. Schmaltz
Reg. No. 39,828
DGS:KAF:PLSkaw

VIII. CLAIMS APPENDIX

10. An arm support device for use with an elongated item having a handle, the arm support device comprising:

a coupler adapted to be coupled to the handle;

a forearm receiving member defining a channel elongated along a length that extends between open front and rear ends of the forearm receiving member, the channel having an open top side, the forearm receiving member being positioned above the coupler; and

a pivot member that connects the forearm receiving member to the coupler, the pivot member defining a pivot axis that extends generally in an upward/downward direction and is located adjacent the front end of the forearm receiving member, the forearm receiving member being pivotally moveable about the pivot axis defined by the pivot member, and the length of the forearm receiving member extending generally radially outwardly from the pivot axis.

11. The arm support device of claim 10, wherein the forearm receiving member includes a base portion that inclines upwardly from the coupler.

13. The arm support device of claim 10, wherein the forearm receiving member inclines relative to the coupler as the arm cradle extends from the front end to the back end.

23. An arm support device for use with an elongated item having a handle, the arm support device comprising:

a handle coupler defining a pivot shaft opening;

an arm cradle having a base portion and opposing left and right side walls that define an upwardly facing channel having an open top side, the channel having a width and a length, the width of the channel being defined as a maximum distance measured between the left and right side walls, the length of the channel being generally perpendicular to the width and extending from a front end to a back end of the base portion, and the width of the channel being shorter than the length of the channel; and

a pivot pin positioned at the front end of the base portion of the arm cradle, the pivot pin including a pivot shaft portion defining a pivot axis about which the arm cradle pivots, the pivot

shaft portion extending downwardly relative to the arm cradle such that the pivot axis extends generally in an upward/downward direction, the pivot shaft portion being pivotally received within the pivot shaft opening of the coupler, the length of the channel of the arm cradle extending generally radially outwardly from the pivot axis.

24. The arm support device of claim 23, wherein the base portion inclines as the base portion extends from the front end to the back end of the base portion.

25. The arm support device of claim 23, wherein the length of the channel is at least two times larger than the width of the channel.

26. The arm support device of claim 23, wherein the length of the channel is in the range of 5-12 inches.

35. The arm support device of claim 23, wherein the pivot pin includes an upper end portion positioned at the bottom base portion of the arm cradle and a lower end portion defining the pivot shaft portion of the pivot pin, and wherein the upper end portion of the pivot pin is aligned at an obtuse angle relative to the lower end portion of the pivot pin.

IX. EVIDENCE APPENDIX

1. OFFICE ACTIONS AND AMENDMENTS/RESPONSES
 - a. Final Office Action -- mailed April 4, 2006
 - b. Advisory Action -- mailed June 14, 2006

2. REFERENCES RELIED UPON BY THE EXAMINER
 - a. U.S. Patent No. 2,146,350 issued to Roberts
 - b. U.S. Patent No. 5,212,900 issued to Perry

X. RELATED PROCEEDINGS APPENDIX

None.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/848,829	05/19/2004	Thomas John Nyland	14684.1US01	4775

7590

04/04/2006

Merchant & Gould P.C.

P.O. Box 2903

Minneapolis, MN 55402-0903

D65

EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 04/04/2006

A FR 2 mo: 06/04/2006
A PR 3 mo PTA: 07/04/2006
A FR 6 mo: 10/04/2006 ✓

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/848,829

Applicant(s)

NYLAND, THOMAS JOHN

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 August 2005.
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 16-30 and 32-35 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-13, 16-30 and 32-35 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 23 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4-13-2005
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 33 recites the limitation "the one piece member" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10-11, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts.

The patent to Roberts shows a stabilizer for a fishing rod and reel in Fig. 2. Roberts shows a clamp 17, 18, an arm cradle 2, 3 that opens upwardly (since arms 16, 16 will pivot upwardly due the adjustment of bolt 12) and being positioned above the top side of the clamp. Roberts shows a receptacle between arms 17, 18 extending through the clamp from the front side to the back side. Roberts shows a pivot pin 9 connecting the

Art Unit: 3643

arm cradle to the coupler (taken to be the clamp). Roberts shows the pivot pin having a pivot shaft that extends downwardly from the arm cradle to the coupler. The pivot pin is free to pivot about a pivot axis that is offset to the left as shown in Fig. 2. the pivot pin is connected to the arm cradle at a location adjacent the front end of the arm cradle as shown in Fig. 3 noting that no frame of reference is given. The length of the forearm receiving member extending radially outwardly from the pivot axis since the length can be interpreted as the distance along the curve of the arm in the plane of the paper.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry in view of Paddock for substantially the same reasons stated in the first Office Action.

The patents to Perry and Paddock show fishing rod attachments. Perry shows a fishing rod with a top side, bottom side, a left side and a right side. Perry shows an arm cradle 52, 54 connected to the fishing rod 42. The cradle opens in an upward and is pivotally movable relative to the fishing rod about a pivot axis that is offset to one side of the fishing rod as shown in Fig. 2. The patent to Paddock shows a fishing 18 rod having a plurality of eyelets 26 as disclosed in Fig.1 and in column 5, lines 3-4. The patent to Perry shows all of the elements recited with the exception of the eyelets positioned on

Art Unit: 3643

the rod. Perry probably has eyelets but at any rate, it would have been obvious to provide Perry with eyelets as shown by Paddock for the purpose of guiding the fishing line. In reference to claim 2, Perry shows the cradle positioned on the top of the fishing rod. In reference to claim 3, Perry appears to show the cradle 54 inclined upwardly at about a 45 degree angle. It appears that Perry would be inclined from 0 degrees to 90 degrees. In reference to claim 4, Perry shows the incline angle being adjustable. In reference to claim 5, Paddock shows a fishing rod with a shaft and a handle wherein the fishing rod includes a reel mount at the handle and the arm cradle is connected to the handle behind the reel mount as shown in Fig. 1. In reference to claim 7, Perry shows the arm cradle having a front end and a back end and the arm cradle is elongated from the front end to the back end.

5. Claims 1-2, 4, 7, 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts in view of Paddock.

The patents to Roberts and Paddock show fishing rods having arm cradles as discussed above. Roberts shows all of the elements recited in claim 1 with the exception of the fishing rod having eyelets although the rod probably has eyelets. At any rate Paddock shows a rod having eyelets 26. In reference to claim 1, it would have been obvious provide Roberts with eyelets as shown by Paddock to guide the fishing line. In reference to claim 2, Roberts shows the rod cradle positioned above the fishing rod. In reference to claim 4, Roberts shows an incline angle between the cradle and the fishing rod which is adjustable due to rotation of elements 11-15. In reference to claim

Art Unit: 3643

7, Roberts shows a cradle 2-3 having a front end 8 and a back end and that the cradle is elongated from the front end to the back end. In reference to claim 8, Roberts shows a pivot pin 9 coupled to the front end 8 of the arm cradle 2-3. In reference to claim 9, Roberts shows a clamp 1 coupled to the fishing rod with the clamp defining an opening in which the pivot shaft 9 is pivotally mounted.

6. Claims 12, 16-22, 32, 33, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts.

The patent to Roberts shows a support for a fishing rod as discussed above. In reference to claim 12, Roberts does not disclose that the arm cradle extends upwardly at an angle of between 15-35 degrees relative to the central axis of the receptacle of the coupler, but it would have been obvious to employ an angle in the range of 15-35 degrees to suit the comfort of a user. See *In re Aller et al.*, 105 USPQ 237. In reference to claims 16, 18, 19, Roberts shows all of the elements recited with the exception of that it is not clear if the width of the channel is less than the length of the channel of the arm cradle. At any rate, it would have been obvious to employ a cradle defining a channel which has a width being shorter than the length of the channel since the size relationships would be determined through routine experimentation. Further it would have been obvious to size the length of the channel 1.5 or 2 times larger than the width of the channel. See *In re Rose*, 105 USPQ 137. In reference to claim 17, Roberts shows the base portion 3 extending from an open front portion to the open back end.

7. Claims 23-26 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry in view of Roberts.

Art Unit: 3643

The patents to Perry and Roberts show an arm support for a fishing rod as discussed above. In reference to claim 23, Perry shows an arm cradle 52 in Fig. 1 and a pivot pin 96 at hinge connection 90. The patent to Roberts shows a pivot pin 9 oriented in a vertical direction. Perry shows the pivot pin oriented from side to side not top to bottom, but it would have been obvious to change the orientation of the pivot pin to vertical orientation as shown by Roberts so that the upper portion would be connected to the arm cradle and the lower portion received within the pivot pin opening of the handle coupler 100 noting that merely rearranging the location of parts is contemplated. Further it would have been obvious to employ the connection at the front end of the base portion since the function is the same and no stated problem is solved. See *In re Japikse*, 86 USPQ 70. In reference to claim 35, it would have been obvious to change the orientation of the pivot pin so that the upper end portion is aligned at an obtuse angle with respect to the lower end portion of the pivot pin since the function is the same and no stated problem is solved.

Response to Arguments

8. Applicant's arguments filed January 23, 2006 have been fully considered but they are not persuasive. Applicant's response overcomes the rejection under 35 USC 112, second paragraph. In reference to claim 10, the position of the clamp of Roberts would depend on the size and preference to the user to suit varying fishing conditions. Fig. 2 shows the clamp 3 extending downwardly and inwardly. Applicant argues that Roberts does not show that the pivot axis extends in an upward/downward direction and is located adjacent the front end of the forearm receiving member. However, the term

"adjacent" is a broad relative term and no frame of reference is given. The pivot axis extends almost directly through the end of the arm coupler or the forearm receiving member and therefore a longitudinal axis of the arm clamp 3 taken near the end of clamp (near where the reference numerals 16, 16 are shown in Fig. 2) would intersect the vertical pivot axis of the pivot pin. In reference to claims 1 and 27, Perry discloses an arm support that can pivot or rotate left or right relative to the fishing rod since fixture 100 can rotate on the fishing rod handle. Perry does not state that the stabilizer tab 120 prevents rotation of the rod with respect to the arm cradle. See column 4, lines 28-33. The arm cradle of Paddock can rotate respect to the fishing rod by loosening of clamp 36 so that the rod 14 can turn inside the clamp. In response to applicant's argument that there is no suggestion to combine the references Roberts and Paddock, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art since merely the eyelets 26 on the fishing rod shown by Paddock are being provided to Roberts. Hence the manner in which the two arm cradles operate is not material to the combination. As to claims 16-22, Roberts contemplates an upwardly facing channel and applicant even shows this embodiment on page 14 of the remarks in the response. The relative dimensions would be

Art Unit: 3643

determined through routine experimentation noting changes in size are obvious.

Applicant has not shown how changes in relative sizes would significantly affect the functionality of the device. Also, see *In re Rose*, 105 USPQ 137 as cited above.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

Art Unit: 3643

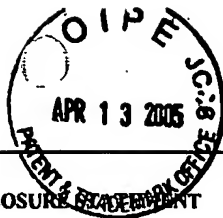
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Kurt Rowan", with a checkmark-like flourish at the end.

Kurt Rowan
Primary Examiner
Art Unit 3643

KR

Date Mailed: Apr 11, 2005

Sheet 1 of 1

FORM 1449* INFORMATION DISCLOSURE STATEMENT IN AN APPLICATION (Use several sheets if necessary)	Docket Number: 14684.1US01	Application Number: 10/848,829
	Applicant: NYLAND	
	Filing Date: 05/19/2004	Group Art Unit: 3643

U.S. PATENT DOCUMENTS							
EXAMINER INITIAL	DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE	
KR ↓	2,158,104	05/16/1939	Bowen	7	Z		
	2,244,408	06/03/1941	Thompson				
	3,372,510	03/12/1968	Arsenault				
	4,014,129	03/29/1977	Capra				
	4,190,977	03/04/1980	Casper				
	5,159,775	11/03/1992	Sutula, Jr.				
	5,390,438	02/21/1995	Warren, Jr.				
		6,493,982 B1	12/17/2002			Macaluso	
FOREIGN PATENT DOCUMENTS							
	DOCUMENT NO.	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION	
						YES	NO
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)							

23552

PATENT TRADEMARK OFFICE

EXAMINER <u>Kurt Rowan</u>	DATE CONSIDERED <u>4-2-2006</u>
EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form for next communication to the Applicant.	



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/848,829	05/19/2004	Thomas John Nyland	14684.1US01✓	4775

7590 06/14/2006
Merchant & Gould P.C.
P.O. Box 2903
Minneapolis, MN 55402-0903

DGS

EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 06/14/2006

AL FR 6 MONTH: 10/04/2006

AS

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/848,829	NYLAND, THOMAS JOHN	
	Examiner	Art Unit	
	Kurt Rowan	3643	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 10, 11, 13, 23-26 and 35.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.


Kurt Rowan
Primary Examiner
Art Unit: 3643

Continuation of 11. does NOT place the application in condition for allowance because: the forearm receiving member of Roberts defines a channel between jaws 16, 16 which is elongated along a length that extends between open front and rear ends of the forearm receiving member and the length of the forearm receiving member extending generally radially outwardly from the pivot axis since from the claim these two lengths do not need to be the same length.